

FISCAL NOTE

Bill #: HB0461

**Title: Citations to persons on job sites
without proof of licensure**

Primary

Sponsor: Bruce Simon

Status: As introduced

Sponsor signature	Date	Dave Lewis, Budget Director	Date
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Fiscal Summary

	<u>FY2000 Difference</u>	<u>FY2001 Difference</u>
Expenditures:		
State Special Revenue	\$9,750	\$9,750
Revenue:		
State Special Revenue	\$6,300	\$6,300
Net Impact on General Fund Balance:	0	0

<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>	
X		Significant Local Gov. Impact	X		Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts

Fiscal Analysis

ASSUMPTIONS:

1. Fines assessed and/or collected by the Department of Commerce, either by a building codes inspector or professional and occupational investigator, would be deposited in the applicable state special revenue fund for use by the Board of Plumbers or State Electrical Board.
2. Citation forms, which would include the appropriate information required by New Sections 9 and 10, would be created by the Board of Plumbers and State Electrical Board and distributed to the state and municipal building codes inspectors for use in issuing citations.
3. The procedures for a person to follow, who has received a citation, would be established by the Board of Plumbers and State Electrical Board, by Administrative Rule, regarding paying the fine to the inspector,

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paying the fine to an appropriate agency, contesting the citation and appealing the misdemeanor for failure to sign and accept the citation.

4. Expenses for Building Codes Division inspectors to travel to board hearings, contested citation cases, and cases appealed to District Court would be paid by the appropriate board. Such expenses will include wages and travel costs including mileage and per diem. It is estimated the total expense for each inspector appearance will be \$325 [(300 miles round trip @ \$0.325 per mile = \$97.50)(12 hours wages @ \$13.00 per hour = \$156)(1 motel room @ \$36.40)(meals @ \$35.00)].
5. It is estimated that ten inspector appearances annually will be required for the Board of Plumbers contested citation proceedings for a total of \$3,250 per year.
6. It is estimated that 20 inspector appearances annually will be required for the State Electrical Board contested citation proceedings for a total of \$6,500 per year.
7. It is estimated that fines collected would be about \$6,300 each fiscal year.

FISCAL IMPACT:

Dept of Commerce	FY2000	FY2001
FTE	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
Personal Services	\$4,680	\$4,680
Operating Expenses	<u>\$5,070</u>	<u>\$5,070</u>
TOTAL	\$9,750	\$9,750
<u>Funding:</u>		
State Special Revenue (02)	\$9,750	\$9,750
<u>Revenues:</u>		
State Special Revenue (02)	\$6,300	\$6,300
<u>Net Impact to Fund Balance (Revenue minus Expenditure):</u>		
State Special Revenue (02)	(\$3,450)	(\$3,450)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Municipal building inspectors will be issuing citations, collecting fines, dealing with contested citations, appeals and board appearances.

TECHNICAL NOTES:

1. State and municipal building codes inspectors are not trained as law enforcement personnel and do not carry firearms like other law enforcement personnel who issue citations involving a monetary fine. The safety and security of building codes personnel issuing "monetary" citations is a concern.
2. The procedure for a person to follow who chooses to contest a citation is not established in HB461. The Board of Plumbers and the State Electrical Board meet quarterly and do not have the personnel or resources to address contested cases in a timely manner, such as when the person cited does not pay the fine within 5 business days as established in New Sections 9 and 10. In addition, a substantial requirement of time is involved in inspector appearances concerning contested citations where the person

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chooses to plead “not guilty” and not pay the fine or appeal the fine or otherwise contests the levying of a fine.

3. Although the provisions of HB461 clearly establish that fines collected by the department be deposited in the special revenue fund for use by the applicable board, it is not clear what the municipalities are to do with the fines collected by municipal inspectors and agencies.
4. HB461 does not establish rule-making authority for implementation of procedures, nor does it require the boards to establish procedures for persons who choose to contest a citation.
5. New Sections 9 and 10 establish specific amounts for civil fines based on first or subsequent offenses. It will be difficult for the field inspector to verify how many prior offenses an offender may have when issuing a citation and determining the monetary amount of the citation. Individual inspectors cannot be expected to keep running totals of offenses on cited individuals.
6. Building codes inspectors will be placed in a position of collecting fines in the field and may be faced with accepting cash from someone cited. The acceptance of cash by a building codes inspector presents difficulties in the handling and accounting of the fines. Present Building Codes Division procedures do not allow field inspectors to accept cash for permit fees from those persons who wish to pay the inspector for the permit.
7. The provisions of HB461 do not address the unlicensed practice or continued unlicensed practice on the job after the person has been cited, but rather only addresses if a person has a license on his or her person while performing the installation.
8. HB461 places enforcement of ARM 8.44.411 (plumbing) and ARM 8.18.403 (electrical), which requires a person to carry his or her license, in the statutes and establishes a citation and fine structure for violation of these administrative rules.
9. The present requirements of Sections 37-68-315 and 37-69-319, MCA, are specific to requesting “proof of licensure” when licensure is required. The new proposals in Sections 1, 3 and 5 should have parallel language, which specifies the issuance of citations in those instances when a license is required.